

INTERVENTION ON THE HIGH SEAS ACT

JANUARY 22, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mrs. SULLIVAN, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 5975]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 5975) to implement the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 5975 is to implement the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, to which the United States is a party and which has not yet come into force.

BACKGROUND AND NEED FOR THE LEGISLATION

The Federal Water Pollution Control Act incorporates express authority for the Federal government to summarily remove and, if necessary, destroy a vessel in the navigable waters of the United States which presents a substantial threat of a pollution hazard as a consequence of a marine disaster. The authorization grew out of a recognition that in many instances, for example, the *Torrey Canyon* incident of 1967, preventive action would be more effective in dealing with the pollution threat than any after-the-fact cleanup effort. While this authority incorporates drastic consequences to the owner of the vessel, it is not unprecedented in Federal law. For example, section 414 of title 33, United States Code, was enacted in 1899 and authorizes the Secretary of the Army to summarily remove any wrecked vessel which is obstructing a navigable channel. The latter

legislation is an extrapolation of the common law doctrine that permitted a state to destroy property in order to control a major calamity, such as a fire. However, the authorization to intervene in the Federal Water Pollution Control Act is limited to the navigable waters of the United States. Coastal protection by way of intervention is thereby accorded under present law only out to the seaward limit of the territorial sea.

The International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties was signed on November 29, 1969, at Brussels by the representatives of the United States Government. On September 20, 1971, the United States Senate gave its advice and consent to ratification of the Convention. By the terms of Article XI, paragraph 1, the Convention will come into force on the ninetieth day following the date on which the Governments of fifteen States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval, or accession. Eleven countries have signed without reservation, ratified, or acceded to the Convention. These are Belgium, Denmark, France, Japan, Sweden, the United Kingdom, Senegal, Norway, Fiji, Liberia, and Spain. The Department of State has advised the Committee that the United States acceptance will be deposited upon enactment of the implementing legislation.

The 1969 High Seas Intervention Convention is the international solution of the problem of a coastal State's lack of authority to act in a timely fashion to prevent major pollution damage to the navigable waters or adjoining shoreline as an outgrowth of a marine disaster, whether the threat is caused by a collision, a stranding, or a disablement of a vessel. The Convention will permit a decision to be made whether or not to intervene without concern as to whether the vessel posing a threat is in the navigable waters. The legislation is needed to enforce the provisions of the 1969 High Seas Intervention Convention.

The Convention attempts to deal with the significant and intricate liability and other legal issues involved with the *Torrey Canyon* incident. *Torrey Canyon* was registered in Monrovia; flew the Liberian flag; was owned by a Bermuda company, which was a subsidiary of a United States corporation; had a Greek crew; was on charter to the British Petroleum Company; and, the casualty occurred outside British territorial waters. Added to this mix was the 30 million gallons of crude oil that smeared the coastlines of two nations.

EXPLANATION OF THE LEGISLATION

The bill would implement the 1969 High Seas Intervention Convention by enactment of the Intervention on the High Seas Act, placing the authority for action in the Secretary of the department in which the Coast Guard is operating.

The bill authorizes necessary measures on the high seas to prevent, mitigate or eliminate grave and imminent danger to the coastline or related interests of the United States from pollution or threat of pollution of the sea by oil which may reasonably be expected to result in major harmful consequences. The interests protected include fish, shellfish and other living marine resources, wildlife, coastal zone and estuarine activities, and public and private shorelines and beaches.

When the Secretary determines that a grave and imminent danger exists, he may coordinate and direct efforts to remove or eliminate the threatened pollution damage; he may undertake salvage or other action to remove or eliminate the threatened pollution; and he may remove and, if necessary, destroy the ship and cargo which is the source of the danger. The measures which may be taken are limited to those reasonably necessary to prevent, mitigate, or eliminate the damage. The bill requires that best endeavors be used to avoid risk to human life, to aid distressed persons, and to avoid unnecessary interference with the rights and interests of others.

The Convention and the bill incorporate an elaborate system of consultations before undertaking intervention. While those consultations could be considered an obstacle to effective action, there is express recognition of the fact that, in cases of extreme urgency, the coastal State may have to take action without prior notification or consultation, or while consultations are still in progress. Thus, while the authorized actions are most carefully circumscribed, latitude is afforded for prompt intervention in appropriate circumstances.

The bill, following the Convention, incorporates specific criteria for determining the scope of intervention. The Secretary, in considering measures to be taken in response to a specific incident, must take account of:

- (1) The extent and probability of imminent damage if those measures are not taken;
- (2) The likelihood of effectiveness of those measures; and,
- (3) The extent of the damage which may be caused by those measures.

In other words, the criteria require an assessment of what would likely happen if the measures were not taken and what good and what harm could result from the proposed measures.

The bill, following the Convention, also provides a measure of damages in the event intervention action is excessive. The United States will be obliged to pay compensation to the extent that damage is caused by measures which exceed those reasonably necessary. For this purpose, the bill authorizes actions against the United States in Federal court. Article VIII of the Convention provides for conciliation or, if conciliation does not succeed, arbitration as provided for in the Annex to the Convention. Accordingly, any claimant could bring an action in United States courts to recover the damages caused by the Secretary, and foreign claimants could invoke the conciliation and arbitration procedures of Article VIII and the Annex to the Convention. Compensation for damage resulting from oil discharge in an incident is covered in the International Convention on Civil Liability for Oil Pollution Damage and the supplementary International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage. The bill which would implement these Conventions is pending before the Senate Committee on Foreign Relations as S. 841.

The bill H.R. 5975 provides authority to issue rules and regulations to implement the legislation. A criminal sanction (a \$10,000 fine and/or one year in prison) is provided to insure compliance with the legislation, the regulations, and lawful orders or directions issued there-

under, and to prevent willful obstruction of persons acting in compliance with those orders or directions. Use of due diligence to comply with an order or direction issued under authority of the legislation, and reasonable cause to believe that compliance would have resulted in serious risk to human life are defenses in a criminal proceeding for violation of any order or direction, and for refusal or failure to comply with a lawful order or direction. Due diligence and risk to human life are not defenses, however, in a proceeding for willfully obstructing a person complying with a lawful order or direction.

The bill provides that nominations of individuals to the list of experts established under Article III of the Convention may be made by the Secretary in consultation with the Secretary of State and the Administrator of the Environmental Protection Agency. The Secretary of State, in consultation with the Secretary, would designate or nominate negotiators, conciliators, and arbitrators as required.

The major substantive change to existing Federal authority made by the bill is the extension of the intervention authority to the high seas beyond the navigable waters of the United States. There would be no amendment or repeal of existing statutes. The definitions and terminology of the bill are consistent with the 1969 High Seas Intervention Convention: The bill if enacted would not come into effect until the Convention becomes effective as to the United States.

COMMITTEE ACTION AND CONCLUSION

The Committee held hearings on October 2, 3, 1973. All testimony was favorable.

The Committee ordered the legislation favorably reported without objection. Its enactment will provide the Secretary of the department in which the Coast Guard is operating with the necessary authority to fully implement the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, to which the United States Senate has given its advice and consent to ratification. The Committee considers that the 1969 High Seas Intervention Convention and the bill will permit the United States to take adequate and timely action to protect its coastline, while the safeguards and provisions of the Convention will not expose the American merchant marine to harassment off foreign coasts.

Addressing the latter issue, the American Institute of Merchant Shipping in a letter to the Chairman of the Coast Guard Subcommittee dated October 1, 1973, stated:

"The steamship companies represented by AIMS believe that the authority to take action on the high seas, given by this Convention and the implementing legislation, is desirable. We also believe that the safeguards incorporated in this agreement are sufficient to protect the interests of the shipowner in the event that the intervening nation causes unnecessary damage to a vessel."

The purpose of the actions authorized by the legislation is to reduce or mitigate the effect of a discharge on our coastal environment. The Environmental Impact Statement prepared by the U.S. Coast Guard indicates that although the actions taken under authority of the legislation could in themselves have an adverse environmental impact, the effect of the discharge is usually greater than the effects of the prevention measures.

COST OF THE LEGISLATION

Pursuant to clause 7 of Rule XIII of the Rules of the House of Representatives, the Committee estimates that there will be no additional cost incurred by the Government as a result of enactment of the legislation. There would be no significant impact on the resources of the Coast Guard required to discharge its responsibilities to prevent or mitigate damage to coastal areas since the augmentation of Coast Guard forces necessary under present law to deal with threats of pollution from incidents within the territorial sea and contiguous zone should be adequate to deal with those even rarer instances which are likely to arise on the high seas. The bill expressly provides that the revolving fund established under section 311(k) of the Federal Water Pollution Control Act shall be available to the Secretary for Federal actions and activities taken under the legislation.

The Committee is not aware of any estimates of cost made by any Federal agency which are different from those made by the Committee.

CHANGES IN EXISTING LAW

Enactment of the legislation will not amend or repeal existing law.

DEPARTMENTAL REPORTS

H.R. 5975 was the subject of an Executive Communication (No. 445) from the Secretary of Transportation; the text follows herewith. There also follows the text of reports received from several departments on this same subject legislation.

[Exec. Com. No. 445]

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., February 15, 1973.

HON. CARL ALBERT,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: There is transmitted herewith a proposed bill, "To implement the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969."

The proposed bill would, as stated in the title, implement the Convention, which was ratified by the Senate on September 20, 1971. The Convention permits a coastal nation to take whatever action it deems necessary to prevent, mitigate or eliminate a threat of oil pollution resulting from a maritime accident beyond that coastal state's territorial sea. That authority is subject to reasonable safeguards. The Convention addresses internationally some of the types of issues which arose in 1967 following the grounding of the *Torrey Canyon* off the southeast coast of England.

The bill places the authority for action in the Secretary of the department in which the Coast Guard is operating. In appropriate circumstances, actions could be taken against United States and foreign vessels. Exercise of that authority is conditioned by the requirement for an express determination by the Secretary that there exists a grave and imminent danger to the coastline or related interests

of the United States from pollution or threat of pollution of the sea by oil. The bill provides necessary regulatory authority for the Secretary and sanctions for the effective enforcement of that authority.

The Secretary would be authorized to use the revolving fund established pursuant to the Federal Water Pollution Control Act as one means of funding extraordinary Federal activities under the bill. The revolving fund is now available for Federal clean-up of oil and related activities, in areas subject to United States jurisdiction. Activities on the high seas under this bill will be similar.

No effort is made in the Convention or this bill to articulate the various types of actions which could be taken. It is not possible to define all the possible incidents because their specific nature may become known only as an emergent situation develops. Under those circumstances, the full exercise of Executive Branch discretion should be available. At the same time, however, the Convention and the proposed bill contain a number of constraints to assure that the Secretary's actions will be reasonable under the circumstances. Some specific criteria upon which actions must be based are included.

It would be appreciated if you would lay the proposed bill before the House of Representatives. A similar bill has been transmitted to the President of the Senate.

The Office of Management and Budget has advised that enactment of this proposal would be consistent with the Administration's objectives.

Sincerely,

CLAUDE S. BRINEGAR.

(The proposed legislation attached to this communique is now H.R. 5975.)

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., December 13, 1973.

HON. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries,
U.S. House of Representatives,
Washington, D.C.

DEAR MADAM CHAIRMAN: This is in reply to your request for the views of the Department regarding H.R. 5975, a bill—"To implement the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969."

The Convention, which H.R. 5975 would enact into domestic law, was signed by the President on November 29, 1969, and ratified by the Senate on September 20, 1971. It clarifies the legal rights of coastal States respecting the abatement of oil pollution hazards on the high seas.

The proposed legislation authorizes the Secretary of the Department in which the Coast Guard is operating to take whatever measures are necessary in order "to prevent, mitigate or eliminate a grave and immediate danger of pollution by oil to the coastline or related interests of the United States, following a maritime casualty."

Before taking action, the Secretary is required to consult, through the Secretary of State, the other countries affected by the marine casualty and to notify the Administrator of the Environmental Protection Agency as well as any other persons known to have interests which would be affected by his actions. In cases of extreme urgency, the Secretary may act without prior consultation or notification of the aforementioned persons.

In all cases, the measures taken by the Secretary must be commensurate with the actual or threatened damage. If the measures taken are disproportionate to the actual or threatened damage to the coastline or related interests of the United States, an action for compensation for the excess may be brought against the United States. If, on the other hand, any person willfully violates, refuses to comply with, or attempts to obstruct the enforcement of a provision of the Act or a regulation issued thereunder, criminal penalties can be invoked against that person.

The Department of Commerce supports H.R. 5975 and recommends its enactment.

The Office of Management and Budget advises that there is no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

Sincerely,

KARL E. BAKKE,
General Counsel.

DEPARTMENT OF STATE,
Washington, D.C., June 11, 1973.

Hon. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives.

DEAR MRS. SULLIVAN: The Secretary has asked me to reply to your letter of March 23 requesting the views of this Department on H.R. 5975, a bill to implement the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969.

We strongly support this legislation, which will provide the United States Government with the domestic legal authority necessary to complete its ratification of the 1969 Intervention Convention. We believe that the entry of this Convention into force is a vitally important step in enabling the United States and other coastal nations to take the actions necessary to prevent or mitigate serious oil pollution damage resulting from maritime casualties on the high seas.

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of the proposed legislation would be consistent with the objectives of the Administration.

Sincerely,

MARSHALL WRIGHT,
Assistant Secretary
for Congressional Relations.

DEPARTMENT OF THE NAVY,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., July 5, 1973.

HON. LEONOR K. SULLIVAN,
*Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D.C.*

DEAR MADAM CHAIRMAN: Your request for comment on H.R. 5975, a bill "To implement the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969," has been assigned to this Department by the Secretary of Defense for the preparation of a report expressing the views of the Department of Defense.

The purpose of the bill is, as stated in the title, to implement the Convention which was ratified by the Senate on September 20, 1971, and which permits a coastal nation to take action to prevent, mitigate or eliminate a threat of oil pollution resulting from a maritime accident beyond the coastal states territorial sea.

The Department of the Navy, on behalf of the Department of Defense, interposes no objection to the enactment of H.R. 5975.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report on H.R. 5975 for the consideration of the Committee and that enactment of H.R. 5975 would be consistent with the Administration's objectives.

For the Secretary of the Navy.

Sincerely yours,

E. H. WILLETT,
*Captain, U.S. Navy,
Deputy Chief.*

EXECUTIVE OFFICE OF THE PRESIDENT,
COUNCIL ON ENVIRONMENTAL QUALITY,
Washington, D.C., September 20, 1973.

HON. LEONOR K. SULLIVAN,
*U.S. House of Representatives,
Washington, D.C.*

DEAR MRS. SULLIVAN: This is in response to your request for the views of the Council on Environmental Quality on H.R. 5975, a bill to implement the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties. The Council strongly supports prompt passage of this bill.

H.R. 5975 fully implements the Intervention Convention which will facilitate protection of our coastal environment by authorizing action on the high seas when a maritime casualty threatens grave and imminent damage of major harmful consequences from oil pollution. The Intervention Convention is an important component of the system of international agreements we are building through the Inter-Governmental Maritime Consultative Organization (IMCO), including conventions controlling ship pollution and providing for liability and compensation for its victims.

We look forward to continued cooperation with members of your committee as we undertake these efforts through IMCO.

Sincerely,

JOHN A. BUSTERUD,
Acting Chairman.

○

THE UNIVERSITY OF CHICAGO
LIBRARY



